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124858/GETS 5307.1
PATENT

OFFICIAL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit 3746

Application of Shea et al.

Serial No. 10/689,806

Filed 10/21/03

Confirmation No. 4367

For APPARATUS AND METHOD FOR AUTOMATIC DETECTION AND AVOIDANCE
OF TURBOCHARGER SURGE ON LOCOMOTIVE DIESEL ENGINES

July 26, 2004

**CONDITIONAL PETITION UNDER 37 CFR 1.137(f) FOR REVIVAL OF
AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY**Mail Stop Petition
Commissioners for Patents
P.O. Box 1450
Arlington, VA 22313-1450

TO THE COMMISSIONER FOR PATENTS,

SIR:

This is a conditional petition that accompanies a NOTICE OF FILING OF
INVENTION IN 18-MONTH PUBLICATION JURISDICTION (37 C.F.R. § 1.213(c))

In the event that Applicants have failed to satisfy the Director under the exception
specified in 35 U.S.C. 122(b)(2)(B)(iii) that the delayed notice was unintentional and, as a result,
this application is regarded as being abandoned, APPLICANTS HEREBY PETITION FOR
REVIVAL OF THIS APPLICATION.

This petition is based on the following in accordance with C.F.R. 37 CFR § 1.137(f):

(1) The reply in the form of the NOTICE OF FILING OF INVENTION IN 18-MONTH
PUBLICATION JURISDICTION (37 C.F.R. § 1.213(c)) is filed herewith.

(2) The Commissioner is hereby authorized to charge the petition fee of \$1,330.00 as set
forth in 37 C.F.R. § 1.17(m), any underpayment, and credit any overpayment of government fees
to Deposit Account No. 19-1345.

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(3) STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of this petition under 37 C.F.R. § 1.137(b) was unintentional.

(4) Inasmuch as this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

Please contact the undersigned if there are any questions concerning this application, including any question as to whether either the abandonment or the delay in filing a petition under 37 C.F.R. § 1.137(b) was unintentional.

The Commissioner is hereby authorized to charge any underpayment or credit any overpayment to Deposit Account No. 19-1345. In the event the present application is deemed to not have become abandoned, Applicants respectfully request that a refund of the enclosed fee be applied to the aforementioned Deposit Account.

Respectfully submitted,



Frank R. Agovino, Reg. No. 27,416
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St. Louis, Missouri 63102
(314) 231-5400

ROE/jmd

Enclosures:

Fee Payment

Reply

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Art Unit 3746

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For APPARATUS AND METHOD FOR AUTOMATIC DETECTION AND
AVOIDANCE OF TURBOCHARGER SURGE ON LOCOMOTIVE DIESEL
ENGINES

July 26, 2004

NOTICE OF FILING OF INVENTION IN 18-MONTH PUBLICATION
JURISDICTION (37 C.F.R. 1.213(c))
AND
RESCISSION OF PREVIOUS NON-PUBLICATION REQUEST
UNDER 35 U.S.C. § 122(b)(2)(B)(ii)

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Mail Stop PG Pub
Commissioner for Patents
P.O. BOX 1450
Alexandria, Virginia 22313-1450

SIR:

Upon filing the above-identified application, Applicants submitted a request for nonpublication. In accordance with the requirements of 37 C.F.R. § 1.213(c), Applicants hereby notify the Office that an application directed to the invention disclosed in the above referenced U. S. application was filed on June 4, 2004 in the Chinese Patent Office.

Applicants recognize that under 35 U.S.C. § 122(b)(2)(B)(iii) this notice should be provided no later than forty-five (45) days after the date of such foreign filing. Applicants further recognize that under 35 U.S.C. § 122(b)(2)(B)(iii) after the prescribed 45 day period the application shall be "regarded as being abandoned, *unless shown to the satisfaction of the of the Director that the delay was unintentional*" (emphasis added). Applicants request that this Notice be considered as satisfying the Director that the delay was unintentional according the exception specified by the emphasized language of 35 U.S.C. § 122(b)(2)(B)(iii).

The undersigned became aware of the foreign filing date for the first time on July 26, 2004. Moreover, although the notice is being provided beyond the forty-five (45) day time period, it is being provided within fifty-two (52) days of the foreign filing. Because the delay was unintentional and is only seven (7) days beyond the prescribed 45-day

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period, Applicants hereby request recession of the previously filed non-publication request.

Thus, on behalf of the Applicants, the undersigned submits that the failure to notify the Director within the prescribed time period was unintentional. Accordingly, this application is covered by the exception specified in 35 U.S.C. § 122(b)(2)(B)(iii) and the application should not be regarded as being abandoned.

Alternatively, if the above explanation of the delay does satisfy the Director that the delay was unintentional, Applicants simultaneously submit herewith a conditional Petition to Revive an Application for Patent Abandoned Unintentionally.

Respectfully submitted,



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